

FCC MAIL SECTION
Federal Communications Commission

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(Ironton and Salem, Missouri))

MM Docket No. 99-71

RM-9362

NOTICE OF PROPOSED RULE MAKING

Adopted: February 24, 1999

Released: March 5, 1999

Comment Date: April 26, 1999

Reply Date: May 11, 1999

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed on behalf of Dockins Communications, Inc. ("Dockins"), licensee of Station KYLS-FM, Ironton, Missouri, and Ultra-Sonic Broadcast Stations, Inc. ("Ultra-Sonic"), licensee of Station KKID(FM), Salem, Missouri.¹ Dockins and Ultra-Sonic request the substitution of Channel 240C3 for Channel 224A at Ironton, Missouri, and modification of the license for Station KYLS to specify operation on Channel 240C3. To accommodate the substitution at Ironton, Dockins and Ultra-Sonic further request the substitution of Channel 225C3 for Channel 240A at Salem, Missouri, and modification of the license for Station KKID(FM) to specify operation on Channel 225C3. Dockins and Ultra-Sonic have both stated they will promptly file applications for the new channel at Salem and Ironton.

2. In support of the proposal, Dockins and Ultra-Sonic state that the proposal constitutes an incompatible channel swap as Channel 240C3 cannot be used at Ironton while Channel 240A is operating in Salem, nor can Channel 225C3 be utilized in Salem while Channel 224A is operating in Ironton. Therefore, Dockins and Ultra-Sonic argue that as there are no other alternate channels available for either upgrade, the proposal creates a mutually exclusive relationship as contemplated by Section 1.420(g)(3) of the Commission's Rules, and therefore is exempt from the consideration of competing proposals. See Modification of FM Broadcast Licenses to Higher Class Co-Channels or Adjacent Channels, 60 RR 2d 114, 120 (1986).

¹ The Report and Order in MM Docket No. 97-136, 13 FCC Rcd 6584 (1998), substituted Channel 224A for Channel 225A and modified the license for Station KYLS-FM to specify operation on Channel 224A.

Dockins and Ultra-Sonic point out that Station KYLS-FM, Ironton, is precluded from upgrading to Class C3 status on Channel 224 because of significant short-spacing to Station WVZA, Herrin, Illinois, Station KMAL, Malden, Missouri, and to an application for a new FM stations at Popular Bluff, Missouri.

3. In further support of the petition, Dockins and Ultra-Sonic state that adoption of the proposal would result in significant public interest benefits. The area encompassed within Station KYLS-FM's 60 dBu contour would increase from 1,846.7 square kilometers to 4,681.8 square kilometers which constitutes an increase of 153 percent and the population served would increase from 15,802 persons to 38,933 persons for an increase of 146 percent. According to Dockins and Ultra-Sonic, the area within the 60 dBu contour of Station KKID(FM) would increase from 974.8 square kilometers to 4,755.4 kilometers for an increase of 388 percent and the population served would increase from 11,410 persons to 49,796 persons for an increase of 336 percent. Dockins and Ultra-Sonic point out that there will be no loss of service as a result of the grant of the proposal, neither community is located in the vicinity of an urbanized area, the proposal can be granted in conformity with the Commission's allocation requirements and Ironton and Salem are separate and distinct communities deserving of expanded service.

4. Channel 240C3 can be substituted for Channel 224A at Ironton, Missouri, consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's rules at petitioner's specified site for Station KYLS-FM.² Channel 225C3 can be substituted for Channel 240A at Salem, Missouri, at the presently authorized site of Station KKID(FM).³

5. In light of the above, we shall propose to substitute Channel 240C3 for Channel 224A at Ironton, Missouri, and modify the license for Station KYLS-FM to specify operation on the higher class channel, in accordance with Section 1.420(g)(3) of the Commission's Rules. We shall also propose to substitute Channel 225C3 for Channel 240A at Salem, Missouri, and modify the license for Station KKID(FM) accordingly. As this proposal constitutes an incompatible channel swap, we will not accept competing expressions of interest in Channel 240C3 at Ironton.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

Community	Channel No.	
	Present	Proposed
Ironton, Missouri	224A	240C3
Salem, Missouri	240A	225C3

² The coordinates for Channel 240C3 at Ironton are 37-33-46 and 90-44-29.

³ The coordinates for Channel 225C3 at Salem are 37-38-01 and 91-32-05.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **April 26, 1999**, and reply comments on or before **May 11, 1999**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

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9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, N.W., Washington, D. C.